

§ 21.5725

(1) Has not passed his or her 21st birthday; or

(2) Is incapable of self-support because of a mental or physical incapacity that existed before his or her 21st birthday and is, or was at the time of the veteran's or servicemember's death, in fact, dependent on him or her for over one-half of his or her support; or

(3) Has not passed his or her 23rd birthday; is enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense or the Secretary of Education, as the case may be; and is, or was at the time of the veteran's or servicemember's death, in fact, dependent upon him or her for over one half of his or her support.

(Authority: 10 U.S.C. 1072(2)(D), 2147(d)(1))

(d) *Surviving spouse*. The term means a widow or widower who is not remarried.

(Authority: 10 U.S.C. 2147(d)(2))

(e) *Servicemember*. This term means anyone who—

(1) Meets the eligibility requirements for the program, and

(2) Is on active duty in the Air Force, Army, Navy or Marine Corps.

(Authority: 10 U.S.C. 2142)

(f) *Spouse*. This term means a person of the opposite sex who is the husband or wife of the veteran or servicemember.

(Authority: 10 U.S.C. 2147)

(g) *Divisions of the school year*. (1) *Standard academic year* is a period of 2 standard semesters or 3 standard quarters. It is 9 months long.

(2) *Standard quarter* is a division of the standard academic year. It is from 10 to 13 weeks long.

(3) *Standard semester* is a division of the standard academic year. It is 15 to 19 weeks long.

(4) *Term* is either

(i) Any regularly established division of the standard academic year, or

(ii) The period of instruction which takes place between standard academic years.

(Authority: 10 U.S.C. 2142)

(h) *Full-time training*. This term means training at the rate of 12 or more semester hours per semester, or the equivalent.

(Authority: 10 U.S.C. 2144)

(i) *Part-time training*. The term means training at the rate of less than 12 semester hours per semester or the equivalent.

(Authority: 10 U.S.C. 2144)

(j) *Enrollment period*. This term means an interval of time during which an eligible individual—

(1) Is enrolled in an accredited educational institution; and

(2) Is pursuing his or her program of education.

(Authority: 10 U.S.C. 2142)

§ 21.5725 Obtaining benefits.

(a) *Actions required of the individual*. In order to obtain benefits under the educational assistance and subsistence allowance program, an individual must—

(1) File a claim for benefits with VA, and

(2) Ensure that the accredited institution certifies his or her enrollment to VA.

(Authority: 10 U.S.C. 2149)

(b) *VA action upon receipt of a claim*. Upon receipt of a claim from an individual VA shall—

(1) Determine if the individual, or the veteran upon whose service the claim is based, has or had basic eligibility;

(2) Determine that the eligibility period has not expired;

(3) Determine that the individual has remaining entitlement;

(4) Verify that the individual is attending an accredited institution;

(5) Determine whether payments may be made for the course, and

Department of Veterans Affairs

§21.5741

(6) Make appropriate payments of educational assistance and subsistence allowance.

(Authority: 10 U.S.C. 2142–2149)

CLAIMS AND APPLICATIONS

§21.5730 Applications, claims, and time limits.

The provisions of subpart B of this part apply with respect to claims for educational assistance under the educational program described in §21.5701, VA actions upon receiving a claim, and time limits connected with claims.

(Authority: 10 U.S.C. 2141, 2149; 38 U.S.C. 5101, 5102, 5103)

[64 FR 23772, May 4, 1999]

ELIGIBILITY AND ENTITLEMENT

§21.5740 Eligibility.

(a) *Establishing eligibility.* To establish eligibility to educational assistance under 10 U.S.C. Chapter 107 an individual must—

(1) Enlist or reenlist for service on active duty as a member of the Army, Navy, Air Force or Marine Corps after September 30, 1980 and before October 1, 1981 specifically for benefits under the provisions of 10 U.S.C. 2141 through 2149, Pub. L. 96–342,

(2) Have graduated from a secondary school,

(3) Meet other requirements as the Secretary of Defense may consider appropriate for the purpose of this chapter and the needs of the Armed Forces,

(4) Meet the service requirements stated in paragraph (b) of this section, and

(5) If a veteran, have been discharged under honorable conditions.

(Authority: 10 U.S.C. 2142(b), 38 U.S.C. 5303A)

(b) *Service Requirements.* (1) The individual must complete 24 continuous months of active duty of the enlistment or reenlistment described in paragraph (a)(1) of this section; or

(2) If the enlistment described in paragraph (a) of this section is the individual's initial enlistment for service on active duty, the individual must—

(i) Complete 24 continuous months of active duty, or

(ii) Be discharged or released from active duty—

(A) Under 10 U.S.C. 1173 (hardship discharge), or

(B) Under 10 U.S.C. 1171 (early-out discharge), or

(C) For a disability incurred in or aggravated in line of duty; or

(iii) Be found by the VA to have a service-connected disability which gives the individual basic entitlement to disability compensation as described in §3.4(b) of this title. Once the VA makes this finding, the individual's eligibility will continue notwithstanding that the disability becomes non-compensable.

(3) In computing time served for the purpose of this paragraph, VA will exclude any period during which the individual is not entitled to credit for service as specified in §3.15 of this title. However, those periods will not interrupt the individual's continuity of service.

(Authority: 10 U.S.C. 2142; 38 U.S.C. 5303A)

[45 FR 31, Jan. 2, 1980, as amended at 54 FR 34984, Aug. 23, 1989]

§21.5741 Eligibility under more than one program.

(a) *Veterans and servicemembers.* A veteran or servicemember who is eligible for educational assistance under either 38 U.S.C. chapter 31 or 34, or subsistence allowance under 38 U.S.C. chapter 31 may also be eligible for the Educational Assistance Test Program. (See §21.5824 for restrictions on duplication of benefits.)

(b) *Spouse, surviving spouse or dependent child.* A spouse, surviving spouse or dependent child who is eligible to receive educational assistance under 38 U.S.C. Chapters 31, 32, 34 and 35 may also be eligible for the Educational Assistance Test Program. (See §21.5824 for restrictions on duplication of benefits.)

(Authority: 10 U.S.C. 2142)

(c) *Limitation on benefits.* (1) Before March 2, 1984 the 48 month limitation on benefits under two or more programs found in 38 U.S.C. 3695 does not apply to the Educational Assistance Test Program when taken in combination with any program authorized under title 38 U.S.C.